No. 22811

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

THE DEUTSCH COMPANY, ELECTRONIC COMPONENTS DIVISION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition to Review and Set Aside an Order of the National Labor Relations Board.

Brief for the Deutsch Company, Electronic Components Division.

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JURISDICTION.

This case is before the Court upon the petition of the Deutsch Company, Electronic Components Division (hereinafter called the "Deutsch Company") to review and set aside an order of the National Labor Relations Board (hereinafter called the "Board") issued against the Deutsch Company on May 31, 1967 following proceedings under Section 10(c) of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*).[1] The Board's decision and order are reported at 165 N.L.R.B. No. 5.

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[1]Pertinent provisions of the Act are set forth *infra* in Appendix A.

This Court has jurisdiction over the proceedings under Section 10(f) of the Act, since the alleged unfair labor practices occurred at Banning, California, within this judicial district, where the Deutsch Company is engaged in business. The Board has filed a Petition for Enforcement with this Court, under case number 22753, to enforce the Board's order here in question.

STATEMENT OF THE CASE.

I.

Issues Before the Board.

The issues before the Board were the lawfulness of the Deutsch Company's rule permitting distribution of union literature on company property, except for a specific area, and the lawfulness of the Deutsch Company mailing to its employees a card which the employee could sign and mail to the Board revoking any union authorization cards. The Deutsch Company contended that it was lawfully justified in permitting distribution of union literature on Deutsch Company property, except for a specific area. The Deutsch Company further contended that its mailing of information advising employees of their right to withdraw any authorization cards previously signed, is a lawfully protected activity. The Board found that the Deutsch Company maintained and enforced an unlawfully broad rule prohibiting solicitation and distribution of literature on behalf of a union during non-working time in non-work areas of the plant allegedly in violation of Sections 8(a)(1) and (3) of the Act. The Board further found that the Deutsch Company unlawfully attempted to assist employees to revoke their union authorization cards allegedly in violation of Section 8(a)(1) of the Act.

A. Factors Leading to the Deutsch Company's Permitting Distribution of Union Literature Except in a Specific Area of Its Plant.

The Deutsch Company is engaged in the production and sale of miniature electrical connectors used in the aerospace industry [G.C. Exh. 1(e), 1(g), Tr. 186].[2] In its production process, the Deutsch Company is required to plate various products with gold, cadmium, silver, platinum and other precious metals. These metals are kept in stock at the plant in quantities having great monetary value [Tr. 123, 186]. The building in which the plating is performed has an open rail grate floor which is used to recover excess plating materials. The floor is so constructed that the valuable metals are accessible to the employees in the building [Tr. 124-125]. The Deutsch Company also has an outdoor storage area. This area is not enclosed and is used as storage space for chemicals, maintenance supplies, pipes, tools and other materials and equipment [Tr. 184].

The Deutsch Company organized its present security system in 1961 [Tr. 185]. The primary objectives were to: (i) maintain in-plant security for the company's products, precious metals, supplies and employees, and (ii) maintain standards which would not threaten the loss of the Deutsch Company's Department of Defense security clearance [Tr. 193-194].

As a part of its security program, the Deutsch Company designated a portion of its plant as a security

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[2]Reference abbreviations are as follows: "Tr": portion of the stenographic transcript. "G.C. Exh.": Exhibits of the General Counsel. "Resp. Exh.": Exhibits of Respondent. "Jt. Exh.": Exhibits jointly offered by General Counsel and Respondent. "TXD": Trial Examiner's Decision.

area, encompassing generally those areas in which the company's valuable metals are stored or used, its unenclosed storage supplies are maintained and any secret or security plans or information are in use or stored. The security area is completely enclosed with steel fencing, topped with barbed wire. Ingress and egress to and from the security area is regulated at all times. At gates that are always open, a guard is maintained twenty-four hours a day. Where a full time guard is not maintained, the gates are padlocked at all times when the guards are absent. Access to reception areas is similarly regulated [Tr. 178-183].

In order to control admission into the security area, all persons entering the security area are required to obtain and wear badges. No one is permitted into the securty area unless he has an appropriate badge on his person and it is seen by the guard. The badges are color coded to distinguish between employees and non-employees, and among employees the badges are further color coded to indicate the area in which they normally work, and in some instances, as mechanics, the type of work performed. The badges and color coding system enable the security personnel to quickly determine if a person can be admitted in to the security area and whether he is at a location within the security area in which he has reason to be [Tr. 187-190].

In addition to the foregoing procedures, the Deutsch Company's security program uses personal inspections to insure that valuable materials, products or information are not removed from the security area. No one can leave the security area with a package unless he has written authorization. Briefcases, lunch boxes and similar objects must be opened and inspected upon re-

moval from the security area. Without prior notice, periodic searches are made of all persons leaving the security area [Tr. 192].

The Deutsch Company was initially granted a security clearance by the Department of Defense on February 27, 1961. It was administratively terminated on June 27, 1966. The Department of Defense was requested by a subcontractor to reactivate the Deutsch Company's clearance on July 12, 1966. The clearance was reissued on October 26, 1966 [Tr. 12-15]. At the time of the hearing of this matter, the Deutsch Company was maintaining classified information at its plant [Tr. 252-253].

Since 1961, the Deutsch Company has had in effect and enforced a rule prohibiting all solicitation and all distribution of literature on behalf of any organization on company property within the security area and generally on all company property. The rule was based in large part on the desire to reduce the number of people entering and leaving the security area, particularly with packages and papers, as well as avoiding people congregating in areas they would not normally have business and avoiding crowd control problems, all of which problems would interfere with the enforcement of the Deutsch Company's security program. The rule has been uniformily and non-discriminatorily enforced at all times as against all organizations within the security area and generally as to all company property, other than activities by employees of the Deutsch Company related to unions [Tr. 196-198]. As to the latter activity, the rule has not been enforced against union solicitation or distribution activity on Deutsch Company property, except that distribution of litera-

ture on Deutsch Company property is not permitted within the security area.[3]

B. Violation of the Deutsch Company's Regulation.

On June 3, 1966 two Deutsch Company employees distributed union authorization cards to employees entering through the east gate into the security area. The two stood inside the security area approximately five feet west of the gate entrance, facing each other. At times they stood so close together as to make it difficult for entering personnel to pass between them, causing congestion at the gate entrance. Depending on the number of people approaching the gate at one time, the resulting congestion made it difficult or impossible for the guards to inspect incoming people for appropriate badges [Tr. 211, 216-218, 241, 246].

An assistant personnel manager for the Deutsch Company advised the two employees that company rules

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[3]The rule reads:

"Collections and Gifts:

The solicitation of funds for any purpose, the sale of tickets for all purposes, the operation of lotteries and raffles, and the solicitation of membership in organizations during working hours on company property are absolutely prohibited." [Jt. Exh. 2, p. 15].

As stated, as applied to union activity, the rule was never enforced as broadly as it appeared on its face. There was no evidence of any restriction upon discussions within the security area or distribution activities on company property outside of the security area. The employees understood the true scope of the rule as applied to union organizational activity and operated within its provisions without proscription by the Deutsch Company [TXD 7]. Subsequent to the disciplining of employees who violated the rule in issue, employees distributed literature on company property in accordance with the Deutsch Company's rules on more than ten separate occasions without incident [Tr. 77-78, 89-90].

required them to distribute their literature just outside of the gate entrance. A large employee parking lot is maintained for company employees just outside of the gate and the men could distribute their literature to employees in the lot as they approached to enter the gate [Resp. Exh. 1, Tr. 178-183]. The men refused to move outside of the gate and were given warning notices [Tr. 176, 201].

Thereafter, between June 4, 1966 and July 8, 1966, at least five different employees of the Deutsch Company distributed union literature outside of the gates leading to the security area on more than ten separate occasions without restriction by the Deutsch Company [Tr. 88-90, 118, 156-157]. Additionally, prior to the foregoing incident and any warning about the Deutsch Company's rules, union supporters had on many occasions voluntarily distributed union literature outside of the gates leading into the security area [Tr. 130-131].

On July 8, 1966, two employees, at different times, passed out union authorization cards in a lunchroom located within the security area of the Deutsch Company's plant. Shortly thereafter, they were interviewed at the personnel office by a personnel manager who informed each of them that they had acted in violation of the Deutsch Company's rules and each was given a disciplinary layoff until the following Wednesday [Tr. 79-83, 120-122].

C. Mailing Cards to Employees Which Could Be Used to Revoke Union Authorization Cards.

About July 14, 1966 the Deutsch Company sent a letter to its employees with a postcard enclosed [G.C. Exh. 2, 2(a), Tr. 61-63]. The letter said, in part:

> "If you have changed your mind, been misinformed, coerced, intimidated into signing an authorization card OR if you think someone may have sent in a card with your name on it, you can revoke that card by mailing the enclosed postcard."

The card was addressed to the National Labor Relations Board and stated:

> "Re: Deutsch Electronic Components Division
>
> Gentlemen:
>
> Recently I signed a union representation card of the United Steelworkers of America because of misinformation or duress.
>
> I hereby revoke my authorization for all purposes.
>
> Signature
>
> Dated ....."

ARGUMENT.

I.

The Deutsch Company Justifiably Regulated the Distribution of Union Literature by Its Employees Within the Security Area When Such Distribution Unduly Interfered With the Enforcement of Its Security Program.

The Board and the Courts have long recognized that an employer may restrict some or all union organizational activity on all or part of its property when such a restriction is justified by the circumstances. *N.L.R.B. v. Walton Manufacturing Company,* 289 F. 2d 177 (5th Cir. 1961). In determining whether the restriction is justified, the facts of the individual case must be evaluated, including the basis for the restriction, the scope of the restriction and whether it has been discriminatorily applied. Under circumstances less compelling than those here present, the Board and the Courts have sustained restrictions much broader in their scope than those involved here.

In *N.L.R.B. v. Reeves Broadcasting & Development Corporation,* 336 F. 2d 590 (4th Cir. 1964) the employer enforced a rule prohibiting any discussion relating to union activity at any time on any part of the company's premises. The court held the following facts sufficient to justify the imposition of the broad rule enforced by the employer: (a) The employer's operation of a radio station required split second timing; (b) There was a lack of space for any discussion; and (c) There was a union hall just across the street at which any such activities could be carried on.

In *Stuart F. Cooper Co.,* 136 N.L.R.B. 142 (1962) the employer prohibited union solicitation on any com-

pany property at any time. 136 N.L.R.B. at 148-149. The Board held that prohibition justified because there had been bickering and an air of hostility created by pro and anti-union organizational activity, with some employees threatening to quit, notwithstanding the fact that the degree of disturbance was far less intense than commonly found in such situations.

In *N.L.R.B. v. Enid Cooperative Creamery,* 169 F. 2d 986 (10th Cir. 1948) the Court held that a rule forbidding any solicitation on company property at any time was justified because the organizational activity had apparently resulted in one fight.

The facts in *N.L.R.B. v. Threads, Inc.,* 308 F. 2d 1 (4th Cir. 1962) presented a unique reason for the imposition of restrictions which in its business justification is indistinguishable from the situation in which the Deutsch Company found itself. In *Threads,* the employer was engaged in fabric dyeing and its success depended upon maintaining the secrecy of the formulas that were used in its business. The employer engaged in extensive surveillance and inspection of notes made by employees in its plant in order to enforce a rule forbidding the writing of notes or removing them from the plant at any time. The charging party contended that the rule interfered with his ability to engage in union activities on company property. The Court held that the employer's business operations justified the imposition of the rule, surveillance to determine if it was being complied with, and inspection of notes written by employees to insure that the rule was obeyed.

In applying the foregoing factors to the present case, the following facts are significant. The rule as orig-

inally promulgated and thereafter enforced by the Deutsch Company, was not discriminatory in intent or effect. It applied generally to all activities with equal force, except for union activity and as to such activity, it was less broadly enforced. As applied to union activity, the Deutsch Company's rule does not, as the Board characterized it, prohibit organizational activity at any time on company property. In fact it does not prohibit any solicitation with respect to the union on company property. Similarly, it does not prohibit distribution of union literature on company property, except distribution within the security area. In contrast than to the Deutsch Company's long standing, nondiscriminatory, uniformly enforced rule generally prohibiting solicitation or distribution of literature on company property on behalf of any organization other than a union, as to unions, the company permited solicitation and distribution on company property except within the security area.

There is ample justification for the minimal restriction contained in the liberalized rule that applied to union activity. The Deutsch Company had instituted and maintained a security program, which included a badging system, to protect its property and to protect classified information which it from time to time had in its possession. The company used many precious metals in its production process and kept supplies on hand having great monetary value. In addition, many materials were stocked in an open storage area to which all persons allowed within the security area had access. Classified information was stored at the plant both prior and subsequent to the time in question. The Deutsch Company maintained essentially the same se-

curity program in force at all times since the necessity to protect its own property was always present and it was easier to maintain a set pattern than to periodically re-educate its employees as to the security procedures to be followed from time to time.

Distribution of union literature just inside the gates leading into the security area was causing congestion at the gates as people backed up because their entrance into the security area was being slowed as they were forced to pass single file past the persons engaged in distribution. The jamming resulted in making it difficult and occasionally impossible for the guards to determine if the people entering into the security area were authorized to be there. If the Deutsch Company's rules were not then enforced, the same difficulty in maintaining security at the gates could be anticipated as employees left at the end of their shifts.

Other physical circumstances of the plant and the operation of the security program contributed to the necessity for a prohibition against distribution within the security area. As previously indicated, many of the company's products and the materials used in the manufacturing process were of a small physical dimension, but of substantial monetary value. As a part of the company's procedures, anyone seeking to leave the security area was subject, at random times, to personal inspection. In addition, all packages, briefcases and other containers were always required to be inspected prior to being taken out of the security area. Maintenance of the security program would be inherently disrupted by people bringing in and removing packages from the security area and having papers passing from person to person in various parts of the plant.

Inspection of people and packages would uncover possession of literature, including authorization cards. The union and the concerned employees would not want this information to come to the attention of the Deutsch Company. Similarly, the Deutsch Company would not want to be the recipient of this information, even though uncovered by chance, since, among other problems thereby created, the union might attempt to bring unfounded unfair labor practice charges. Such distribution would also tend to attract employees to places in the security area that they would normally not be present at, making more difficult control over the parts of the security area a person was permitted to be in.

All of the foregoing actual and potential problems were the very ones envisioned by the company in promulgating the original rule and in applying the more liberal interpretation to union activity. In order to alleviate the existing and potential serious impairments to its security program, the Deutsch Company requested the persons engaged in distribution to make a minuscule change in their procedure. That is, distribute their literature on company property just outside of the gates leading into the security area. While not entirely accommodating the requirements for enforcement of the Deutsch Company's security program, the liberal rule enforced by the Deutsch Company represents the best solution under the circumstances and should be held to be lawfully justified.

II.

The Deutsch Company Reasonably Regulated the Right to Distribute Literature When Such Regulation Was Justified by the Requirements of Its Business, Such Distribution Was Permitted on All but One Specific Area of Company Property, There Is No Evidence That There Were Not Adequate Alternative Means for Distribution of Literature and the Evidence Affirmatively Demonstrates That There Were Adequate Alternative Means.

The Deutsch Company submits that its regulation of distribution activities by the union on a part of its property is valid and proper in view of the abundant evidence of justification for the rule, as discussed hereinabove. However, a number of court decisions have indicated that in determining the lawfulness of a restriction of organizational activity on company property, the court should not work in a void by looking solely to the justification for the regulation. Rather, realizing that the issue basically involves a weighing of the competing interests of the property owner to regulate the use of his property and the employees to have reasonable opportunities to engage in organizational activities, these courts have held that the scope of the regulation and its effect on opportunities for organizational activity must be assessed as well as the justification for the regulation.

In *N.L.R.B. v. Rockwell Mfg. Co.*, 271 F. 2d 109 (3rd Cir. 1959) the employer's plant was located in an urban area, having highways and broad sidewalks on

two sides. Parking lots were available to employees immediately adjacent to entrances to the plant. Originally, union literature was distributed on the sidewalks as employees entered the parking lot. Subsequently, employees requested to be allowed to distribute such literature on the parking lots. The company refused this request and an unfair labor practice charge was filed by the union. The Court held that the Board failed to consider the fact that there might be alternative means of communication available, pointed out the various possibilities existing under the facts, and denied enforcement.

In *Korn Industries v. N.L.R.B.*, 389 F. 2d 117 (4th Cir. 1967) the employer prohibited distribution of literature on behalf of any organization on company property. The employer interpreted this rule less broadly as to union literature distributed by its employees and permitted distribution in the parking lot area of the company's premises and the posting of such literature on a union bulletin board. The company justified the rule as being necessary to prevent fire hazards. An employee was discharged for violating the rule by distributing literature in a doorway in a non-working area of the plant. The Court refused to enforce the Board's finding that the rule was unlawful. The Court pointed out that the issue of the presence of satisfactory alternative means of distribution was not presented since the company did not prohibit all distribution on company property. The Court further stated that the scope of the company rule and its effect on organizational

activity, as well as the justification for the rule, must be considered together. So considered, the court held that the rule was valid in view of the minimal nature of the restriction, the alternative means for distribution available both on and off company property and the justification for the restriction.

The Board itself has succinctly stated the spirit reflected by the foregoing decisions in *General Electric Co.,* 163 NLRB No. 31 where the issue was the propriety of the company forbidding the solicitation of funds on company property to aid another local. The Board stated:

> "In striking a balance, as we must, between the Respondent's right to control its own property and the competing right of employees guaranteed in Section 7, we are not prepared to say that the union's interest in using Respondent's premises to collect support money in behalf of striking employees at another plant and in another bargaining unit so outweighs the Respondent's interest in controlling its property as to render unlawful in the specific circumstances of this case Respondent's application of the rule herein involved."

The combined factors present in *Korn Industries* and *Rockwell* are present here. The Deutsch Company's regulation was non-discriminatory, granted union adherents far greater rights than any other group and permitted substantial union activity on company property, restricting only distribution activities and permitting even that activity on all but a part of company

property. Further, sufficient alternative means of distribution are readily available, both on and off company property. The Deutsch Company plant is surrounded on three sides by public sidewalks, where distribution activity could be carried on. The main parking lot was adjacent to the plant and all employees entering on this lot would normally enter the security area from the east or north gate. The employees were allowed to use the parking lot and could engage in their activities from just outside these gates, as employees passed into and out of the gates, as effectively as they could inside the security area. The other gate leading into the security area was adjacent to the Banning Airport. While fewer employees used this gate, the sidewalk and airport property adjacent to this gate was accessible to employees for their purposes. As in *Rockwell,* the union here initially voluntarily engaged in distribution activity in areas permitted by the regulation. There was no evidence that these areas were unsatisfactory or disabled the carrying on of such activity. After the rule was enforced, employees again used these available areas on and off company property, as a base for distribution of literature. While ample opportunity was presented, no one indicated that any of these areas were even less than satisfactory for such purposes. In addition to the foregoing facts, there was no evidence presented demonstrating any inability to adequately and effectively conduct desired organizational work by mail, at public meetings, by personal contact after work and in private homes.

When the justification for the regulation, its minimal effect on organizational activity, the large area of activity still permitted and the alternative methods for distribution available are all considered, the Deutsch Company's regulation is a lawful regulation which is consistent with and does not unduly infringe on the Deutsch Company's right to conduct its business and its employees' rights to engage in organizational activity. Such a determination reflects the balancing of competing interests approved by the Supreme Court in *Adderly v. Florida,* 385 U.S. 39 (1966). There the Court, weighing the competing values of free speech and assembly on the one hand, and the right of the owner of property to regulate the use of his property, ruled that the latter interest must prevail. The Court pointed out that an owner of property has a right to preserve the property he owns for the use to which it is lawfully dedicated. The appellants contended that they had a right to go upon the property because they were going there to exercise their right to free speech and assembly. The Court "vigorously and forthrightly rejected" that argument stating:

> "Such an argument has as its major unarticulated premise the assumption that people who want to propagandize or protest have a constitutional right to do so whenever and however and wherever they please." 385 U.S. at 47-48.

III.

The Deutsch Company May Lawfully Advise Its Employees of Their Rights Under the National Labor Relations Act, Including the Manner in Which They May Revoke Union Authorization Cards Which Were Obtained by Coercion or Similar Means, When the Advice Is Given by Mailing a Letter to the Employees at Their Home so That the Company Cannot Know of the Employees' Reaction, the Letter Does Not Contain Any Threat or Promise to Induce the Employees to Revoke an Authorization Card and the Response Cards Are Addressed Directly to the Board so That the Company Will Not Know What the Employees Do With the Card.

An employer, under the "free speech" provision of section 8(c) of the Act, has the right to advise its employees of the way that they can indicate their rejection or repudiation of a union and its employees have a right to receive this information, notwithstanding the objections of a union. The sole restriction is that the communication must not contain any threats or coercion. Here the letter mailed by the Deutsch Company to its employees merely advised the employees that they need not sign a card, that if they did sign one, in view of the disadvantages of a union and the use a union could make of a card and the circumstances under which some cards had been obtained, they could revoke it in a designated manner. The card enclosed with the letter was addressed directly to the Board so that the Deutsch Company would not be advised of the employee's decision.

In each case where the employer has been found to have committed an unfair labor practice in connection

with revocation of authorization cards, there has been the use of threats or force to obtain revocation or the discussion of whether to revoke the card occurred under circumstances where the employee's decision would be communicated to the employer, thereby applying indirect pressure to the employees' freedom of choice, The Board found that none of these factors were presented here [TXD 12].

In each case where the foregoing factors have not been present and all that the employer did was to advise its employees of the law and make available to them, in a non-coercive manner, the means to revoke authorization cards if they so desired, the Board and the courts have held the employer's action to be protected activity.

In *Perkins Machine Co.,* 141 N.L.R.B. 697 (1963) the employer sent a letter to each of its employees advising them of the procedure by which they could revoke their authorization cards. The Board said that the right to give this information was protected and since there was no coercion in the letter or the surrounding circumstances, there was no basis to object to the employer's conduct.

Similarly, in *N.L.R.B. v. Brookside Industries, Inc.,* 308 F. 2d 224 (4th Cir. 1962) the employer's personnel director advised some employees how to revoke their authorization cards. The Court ruled that there had been no unlawful threats or promises, merely an explanation of the employees' rights, and that such activity was protected.

A related factual situation was presented in *N.L.R.B. v. Sun Co. of San Bern.,* 215 F. 2d 379 (9th Cir.

1954). The employer advised its employees "that those employees who had signed ITU authorization cards could cancel such authorization cards by merely writing the ITU or its representative requesting that such authorizations be cancelled" (See 103 N.L.R.B. 359 at 369). The Court held that such statements were protected.

In *Carolina Mills, Inc.*, 92 N.L.R.B. 1141 (1951) the Board held protected the employer's statement that

> "I hear some of the hands are signing with the union. I don't know whether you are or not, but I advise the best thing to do if you have is to tear up your slip and tell them you don't want any part of the union."

In view of the clear statutory favor given to the employees' right to hear, unrestricted, all sides on the issue of organizational activity, the Deutsch Company should be protected in expressing its position with regard to joining a union and in advising its employees of the action they can take if they agree with the company's point of view.

Conclusion.

For the reasons stated, it is respectfully submitted that the petition to review and set aside the Board's order should be granted.

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Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

FOSTER TEPPER

APPENDIX A.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.) are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8(a) It shall be an unfair labor practice for an employer

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

. . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . .

. . . .

Sec. 8(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

* * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * **

* * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such

order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

APPENDIX B.

This appendix is prepared pursuant to Rule 18(f) of the Rules of the Court. References are to pages of the stenographic transcript.

No.	Identified	Received
	General Counsel's exhibits	
e), 1(g)----------	6	6
and 2(a)----------	62	63
	Respondent's exhibits	
----------	177	178
	Joint exhibits	
----------	58	59